Supreme Court, U.S.
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No.

In The
Supreme Court of the United States

Cyrus Y. Kim,
petitioner,

vs.

City of Federal Way,
respondent.

On Petition for Writ of Certiorari
to United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Petitioner
Cyrus Y. Kim Pro Se
1807 S. 308th CT. #11
Federal Way, WA 98003
(253) 946-1834

Questions presented for review

1. Is there no genuine issue of material fact for the order expelled for one year from a city public park for the reason committed criminal trespass to the public park?

2. Does entering the city public park for the recreational scope of exercise in the early morning from 6:00 to 8:00 constitute criminal trespass to the public park?

3. Is the expulsion for one year from a city public park without any hearing permissible city objectives for the legitimate concerns of public safety and didn't it violate the liberty and due process clause of Fourteenth Amendment?

4. Is the city ordinance permitting the city to exclude people from any city public park reasonably related to the city's objectives in keeping its parks safe for the residents?

5. Are the city park ordinances regulating private conduct and individual invasion of individual rights to make parks safe constitutional?

6. Can a U.S. district court judge repudiate the previous Supreme Court rulings three times with intent on the basis of inferior courts cases and can he violate the doctrine of STARE DECISIS and Federal Rules of Civil Procedure as he pleases?

A list of all parties

Petitioner:

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I. OPINIONS BELOW

(A) No Appeals Court opinion

Reasons filing the petition for a writ of certiorari before appeals court judgment is rendered are on p. 37.

(B) District court opinions

Order denied motion for reconsideration rendered on May 15, 2009 is reprinted on p. 37.

Order granting motion for summary judgment and denying motion for sanctions rendered on May 6, 2009 is reprinted on p.38.

Order denied motion for an order to compel discovery rendered on March 20, 2009 is reprinted on p. 43.

Order denied motion for default judgment rendered on July 8, 2008 is reprinted on p. 45.

II. JURISDICTION

(A) Jurisdiction is conferred upon the Court by 28 U.S.C. §1331, §1367 and §2101(e).

(B) This case has imperative public importance requiring immediate determination by this Court before appeals court judgment is rendered by Rule 11 of this Court.

(C) On May 6, 2009, a U.S. district court judge granted the motion for summary judgment and on May 15, 2009, he denied motion for reconsideration. Notice of civil appeal filed on May 21, 2009 is timeliness.

III. STATEMENT OF CASE

A. Order of expulsion and notice of trespass

City of Federal Way ("the City") expelled Kim from a city public park for one year for the reason committed "criminal trespass" to the city public park two times as below (a copy of the order):

CITY OF FEDERAL WAY
ORDER OF EXPULSION AND NOTICE OF TRESPASS

This letter is An Order of Expulsion and Notice of trespass, pursuant to Federal Way City Code 11-55 and you are hereby informed that as of today, Cyrus Kim, you are forbidden to enter the premises of Steel Lake Park located at 2410 S. 312 St. and 2645 S. 312 ST., Federal Way, WA for any reason whatsoever for a period of one year.

To enter such property may result in prosecution for the crime of Trespass under RCW 9A.52 and related municipal code section(s). A violation by entry upon the listed property may result in a fine, imprisonment, or both.

THIS NOTICE IS VALID FOR ONE YEAR FROM THE DATE OF ISSUANCE.

You are hereby **Trespassed** from Steel Lake Park for **violation of FWCC 11-75(1) two times** within the last 12-consecutive months. **On at least two separate occasions** in the last 12-consecutive months you illegally practiced golf in a Federal Way Park without authorization and, furthermore, caused risk of injury to another

person in doing so. One June 1, 2007, you were asked by Parks employees to stop hitting real golf balls in Steel Lake Park. The incident was investigated by the Police Department, case number 07-8527. In his report, Officer Tucker noted that he told you to use plastic practice golf balls in the Park, not real ones. On July 16, 2007, you were again seen hitting real golf balls in Steel Lake Park and were asked to stop by a parks employee.

A copy of this letter shall be sent to the Federal Way Police Department pursuant to FWCC 11-55(d) for enforcement of this order.

/s/ Donna Hanson 8-28-07
Director of Parks

So, this case is, under federal question by 28 U.S.C. §1331, to challenge the constitutionality of the City's orders and ordinances of FWCC 11-55 and 11-75 and, under 28 U.S.C. §1367, to claim damages of $9,526,000,00 for the deprived fundamental right in the form of liberty protected by Fourteenth Amendment **for one year** including damages for actually paid amount and for infliction of mental distress from the deprived fundamental right and physical illness **for one year** and damages for infliction of mental distress from the apprehension of prosecution, fine, and imprisonment **for one year**.

B. The jury trial date was set on June 9, 2009 (Dkt. #14).

In complaint, Kim clearly explained why the City ordinances and the order of expulsion and notice of trespass of the City violated Fourteenth

Amendment citing previous **Supreme Court cases. The jury trial date was set on June 9, 2009.**

Almost one year later on March 11, 2009, citing irrelevant inferior courts cases, repudiating the previous Supreme Court rulings cited in the complaint, and asserting that the complaint has no genuine issue of material fact, defendant by and through its attorney Brian Christensen filed motion for summary judgment. So, the motion for summary judgment had no other purpose except for the improper purpose to harass, cause unnecessary delay, and needlessly increase the cost of litigation, violating Federal Rules of Civil Procedure ("Fed. Rules") 11(b)(1). Defendant's attorney Christensen denied withdrawing the motion within 21 days. So, Kim filed motion for sanctions against the defendant's attorney Christensen.

C. Repudiated previous Supreme Court rulings second time

In the opposition to defendant's motion for summary judgment, Kim pointed out that the motion for summary judgment was based on the irrelevant inferior courts cases and cited the relevant Supreme Court cases **second time**, but a United States district court judge Robart repudiated second time on the basis of inferior courts cases.

D. Reasons granted motion for summary judgment (p. 40)

1. This case had no genuine issue of material fact.

2. City ordinances to keep its public parks safe are for permissible city objectives and did not violate fundamental rights.
3. The expulsion from city parks is permissible city objectives for the legitimate concerns of public safety and thus it did not violate due process rights and it is constitutional.

E. Reasons denied motion for sanctions

Judge Robart denied the motion for sanctions against defendant's attorney Christensen for the reasons as below (p. 44):

> The City has defended this **frivolous lawsuit** in a respectful and professional manner. The City's motion for summary judgment was thoughtful, accurate, and the proper method for requesting that this matter be dismissed.

F. Reasons denied the motion for reconsideration (p. 39)

1. The order granted motion for summary judgment was not (a) manifest error.

2. Facts or legal authority which could not have been brought to the attention of the court earlier.

IV. STATEMENT OF FACTS

A. Two occasions show no violation of any provision of the City ordinances, but the City expelled for one year.

Occasion One (Complaint p. 2)

There is an approximately 140-yard long and 25-yard wide open space on the beach covered by sand in the Steel Lake public park. Kim always used #9 iron for 30 min. exercise sometimes hitting a baseball or soccer ball, but a driver-club only four times during almost two years.

On June 1, 2007 early morning between 6:00 and 8:00, after ten minute dumbbell exercise and five minute body swing exercise with a golf club without hitting any ball, Kim made three circled marks at the point of approximately 60, 70, and 80 yards away from a hitting area to try approach shots. After sixth shot, one woman came with a dog and sat and was watching the golf balls dropping approximately 30 yards away from the golf balls dropping area and 100 yards away from the hitting area. After cleaning the park bathrooms, Young Yi approached to Kim and stopped the exercise. When Kim asked "why," he answered "for public safety." After saying, "mind your own business," Kim tried to hit another ball. Young Yi threatened to call 911. When Kim responded, "go ahead," he called to his supervisor. During argument for a while, the woman disappeared. Kim returned home, omitting the rest exercise including jogging.

On June 15, 2007, Kim read City Ordinance 91-11[1] posted on the fence at first time, which could not be seen easily as, "Firework, firearms, alcoholic beverages, controlled substances, golf and archery are strictly prohibited at all times."

On June 25, 2007, Kim mailed three letters, one for the City Manager, one for City Council, and one for manager of park maintenance office, indicating

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[1] Ordinance 91-11 was different from the current FWCC 11-55 and 11-75.

the City Ordinance's unconstitutional factors for revision, otherwise, Kim would file a suit claiming huge amounts beyond the price for limited fundamental right.

Nobody responded at all.

Occasion Two (Complaint p. 4):

On July 16, 2007, after dumbbell, parallel and monkey bar, body swing exercise, and 30 minute jogging, still twenty minutes were left to eight o'clock. Kim was curious to hit golf balls toward the artificial soccer field. After having covered a hitting mat on the outside of the soccer field, the sparse lawn area, in order to prevent any damage to the lawn, Kim was hitting golf balls. A man approached and said that he was a supervisor. He stopped the hitting golf balls. When Kim asked, "no damage here, no damage there, nobody is there, why not?" He answered:

> In the soccer field only soccer games are allowed; baseball batting practice, any other game or practicing except the soccer game, or even walking around the soccer field with a dog is not allowed, because Soccer Association donated $500,000 for the artificial soccer field.

During the argument, a woman came walking with her dog. The supervisor said, "Madam, walking with a dog around the soccer field is not allowed." The dog was so friendly and understood various human orders.

B. Mental distress inflicted from the punishment (Complaint p. 4-6)

Kim and Kim's mother was enjoying breakfast on August 29, 2007. Somebody pounded the door of Kim's apartment unit. Kim opened the door. It was a police officer. After asking Kim's name, the officer demanded to bring ID card. When Kim went to the room to get ID card, Kim's mother came to the door and saw the police officer. After seeing the ID card, the officer demanded to follow him to the rental office of the apartment complex. There, he handed over the letter of order of expulsion and notice of trespass by the director of parks and the notice of trespass by police department, and the police officer warned not to enter the public park, otherwise being arrested and prosecuted for trespass.

When Kim returned, Kim's mother asked, "what's wrong?" When Kim explained that punishment to Kim's mother who was 92 years of age at the time and a patient having irregular heartbeat, she was suddenly turned pale and stopped eating and tapped her chest. She said her chest was choking. Even after drinking water, the choking of chest continued. Kim tried to call 911 when the symptom worsened. After almost one hour, her choking symptom disappeared. She skipped lunch and after midnight she suffered from abdominal pain and then diarrhea. Anger and shocked emotion caused and triggered to upset the digestive function. Also the anger and emotional shock made Kim not sleep. When woke up next morning, Kim slept only two hours. From the next day, Kim suffered abdominal pain and diarrhea from digestive malfunction caused, upset, and triggered by the anger and shocked emotion for more than one week, which never experienced. Kim didn't find the normal healthy condition for a month, which Kim enjoyed for 21 years. Kim stopped daily exercise. The anger and shocked emotion, abdominal pain from

digestive malfunction, and the additional pain of Kim's mother's suffering from the digestive malfunction continued for more than three months. From the date stopped exercises to May 2, 2008 for almost one year, Kim had cold three times, which Kim had once for twenty-one years during enjoying daily exercise. Many days of abdominal pain and many days of incompletely slept nights continued. Thus, Kim totally lost the enjoyment and benefit from the daily exercise. Kim's mother and Kim are still suffering mental and emotional distress whenever thinking of the punishments not to enter the public park and the shameful criminal list of trespassing, because those always provoked anger and emotional shock, humiliation, and the apprehension to be arrested and prosecuted for the criminal trespass under RCW 9A.52 and the apprehension of the fines, imprisonment or both to be inflicted. So far, Kim and Kim's mother took Japanese SEIROAN almost three bottles, which is better than Pepto-Bismol. Because one bottle contains 400 pills, both seemed to take more than 1100 pills for eight months, each time taking 3 pills (6 pills for severe pain). Kim never had digestive problem during the daily exercise for 21 years. Still, the pains and mental distress by extreme and outrageous punishment continue.

C. Claims of damages (Complaint p. 19-23)

Kim claims $9,526,000.00 against City of Federal Way for damages of the lost fundamental right protected by Fourteenth Amendment for one year caused by and resulted from the order of director of parks and that of the police department including park employees' orders and the infliction of

mental distress resulted from the alleged unconstitutional acts, the punishments, and the infliction of mental distress from City Council by keeping the unconstitutional ordinances and that from the city manager and the city attorney for not having responded to the letter and not taken any proper action to prevent the punishment.

V. SUMMARY OF ARGUMENT

1. On the concept of the private land(s) owned by the City, FWCC 11-75 makes unlawful all recreational scope of exercise without authorization of director of parks and FWCC 11-55 authorizes the City to expel any park user on the ground committed a criminal trespass upon the park. FWCC 11-55 and 11-75 had no provision of hearing and how to get authorization of director of parks.

Because public parks are not private land(s), the provisions of expulsion and trespass of FWCC 11-55 were wrongly enacted and the City's action of expulsion from the park for one year and the order not to enter the public park for one year on the ground committed criminal trespass and the City employees' order to stop exercise violated the liberty and due process clause of Fourteenth Amendment.

2. The definition of the park from the Supreme Court ruling says everything about the park:

> Running the park is **a public function** and that it has to comply with the Constitution **even if manages by a private entity**...A **park**... **serves the community**...mass **recreation** through the use of parks is plainly **in the public domain**.

3. Supreme Court cases say as:
   (a) The government has no duty to protect individuals from privately inflicted harms;
   (b) In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed;
   (c) Some liberties are so important that they are deemed to be "fundamental rights" and the government cannot infringe upon them unless strict scrutiny;
   (d) Under certain circumstances, administrator acted against his will constitutes a deprivation of liberty that was protected by due process;
   (e) the deprivation of any rights, civil or political, previously enjoyed, may be punishment.

4. FWCC 11-55 and 11-75 regulating private conduct and individual invasion of individual rights and the conduct which state laws are already regulating went too far beyond the boundary of the ordinance to that of the state law.

In *Civil Rights Cases*, Supreme Court declared the Civil Rights Act of 1875 unconstitutional, which was so similar to FWCC 11-55 and 11-75,.

5. The motion for summary judgment based on repudiation of previous Supreme Court rulings cited in the complaint on the basis of irrelevant inferior courts cases and the terrible lack of knowledge unable to distinguish the boundary of the ordinance from that of state law had nothing but an improper purpose of misleading, delaying, harassing, and increasing cost of litigation, violating the doctrine of STARE DECISIS and Fed. Rules. However, judge

Robart, by repudiating previous Supreme Court rulings twice, granted the motion for summary judgment and denied motion for sanctions against respondent's counsel Christensen. So, the order granting motion for summary judgment and denying motion for sanctions was not an error but a misjudgment with intent.

Moreover, before the order granting motion for summary judgment and denying the motion for sanctions, in this same case, judge Robart's two orders were decided in favor of respondent's counsel Christensen who violated six provisions of Fed. Rules.

In the name of United States district court, judge Robart with a tremendous power deprived Kim of the chance of jury trial set on June 9, 2009 by himself without showing a good cause and increased the cost and time and agony for this litigation without any Kim's fault. So, this Court must award $9,526,000.00 without the jury trial already deprived.

6. Respondent's counsel Christensen repudiated previous Supreme Court rulings twice on the basis of inferior court cases for the misleading and improper purpose.

In this same case, the respondent's counsel Christensen violated eight provisions of Fed. Rules. The misleading purposes succeeded in getting one-sided biased favors by judge Robart's tremendous power, but such misconduct by respondent's counsel Christensen violated good moral and professional character as an attorney. So, respondent's counsel Christensen must be sanctioned for a five-year disciplinary punishment for the committed misconduct as an attorney.

VI. ARGUMENT

The doctrine of STARE DECISIS is inviolable without showing a good cause.

Fed. Rules is adopted by the court itself but provided by the action of Congress. So, the Fed. Rules, just as a statute passed by the legislature, has the force of law, and thus, all U.S. judges and the parties cannot refuse or violate the Fed. Rules and must be bound by it.

A. Against granted motion for summary judgment

1. Wrongly enacted provisions of expulsion and trespass based on the concept of private land(s) (Complaint p. 8-11).

On the concept of the private land, all parks users are actually trespassers. The landowner has no duty to protect any trespasser including a burglar or robber who has no right at all to be on the land. The City, the landowner of the parks, also has no duty to protect the trespasser(s) who has no right at all to be on the park. So, the City objectives making city public parks safe for park users becomes to make trespassers including the burglar and the robber safe. Therefore, the provisions of expulsion and trespass were wrongly enacted and City's expulsion for one year by wrongly enacted FWCC 11-55 and 11-75 clearly violated the liberty and due process clause of Fourteenth Amendment.

2. Definition of the park from the Supreme Court cases.

In *Evans v. Newton,* 382 U.S. 296 (1966) (Complaint p. 7, Opposition to defendant's motion for summary judgment ("Opposition") p. 3, and motion for reconsideration ("Reconsideration") p. 2), the Supreme Court held as:

> that **running the park was a public function and that it had to comply with the Constitution even if managed by a private entity**. Justice Douglas, writing for the Court, explained: "The service rendered even by a private park of this character is **municipal in nature**. It is open to every white person, there being no selective element other than race ...**A park** ... is more like a fire department or police department that traditionally serves **the community. Mass recreation through the use of parks is plainly in the public domain...** (*Id.* at 301-302).

The *Evans v. Newton* explains that the provisions of expulsion and trespass were wrongly enacted, and thus, the City's expulsion from the public park for one year deprived the fundamental rights in the form of liberty without due process of law, violating Fourteenth Amendment.

In *DeShaney v. Winnebago County Department of Social Service,* 489 U.S. 189, 195-196 (1989) (Complaint p. 16 and Reconsideration p. 7), the Supreme Court broadly held that "**the government generally has no duty to protect individuals from privately inflicted harms**" but recognized two narrow situation where the government has a duty to provide protection from privately inflicted

harms, **such as when there is incarceration or institutionalization** (*Youngberg v. Romeo,* 457 U.S. 307 (1942) (duty of state to provide for safety and medical needs of involuntarily committed mental patients); *Estelle v. Gamble,* 429 U.S. 97 (1996) (state has constitutional duty to provide medical care for incarcerated prisoners).

So, the expulsion and trespass of FWCC 11-55 have no legitimate ground to make parks safe.

> Citing inferior court case of sex offender case, *Doe v. City of Lafayette,* judge Robart ruled as (p. 41):
>
> The court first finds that there is no fundamental right implicated in the application of these ordinances to this situation. Mr. Kim does not have a fundamental right to do belly exercise in a public park utilizing a golf club and baseballs or golf balls. Nor does the court find that the mere right to be present in a public park is a fundamental right.

However, in *Roth v. Board of regents,* (Complaint p. 17, Opposition p. 3, and Reconsideration p. 9), Supreme Court held as:

> In a Constitution for **a free people**, there can be no doubt that the meaning of **"liberty"** must be **broad indeed**... (408 U.S. 564 (1972))

The Supreme Court has held that **some liberties** are so important that they are deemed to be **"fundamental rights"** and that **generally the government cannot infringe upon them unless strict scrutiny**, and in ***Moore v. City of East Cleveland,*** 431 U.S. 494, 503 (1977), the Supreme

Court has said that **fundamental rights include those liberties** that are "deeply rooted in this Nation's history and tradition."

3. FWCC 11-55 Expulsion from parks and 11-75 Games and sports

FWCC 11-55 Expulsion from parks

(a) In addition to another penalty imposed pursuant to this article, the director or designee may order the expulsion of any person from any park for a period of one to seven days if he or she observes such person:

(1) Using abusive or disruptive language or engaging in conduct that disrupts a park facility or program.

(2) Directing ethnic or offensive remarks at another person based on such person's actual or perceived race or ethnic group, nationality, religion, disability, sex or sexual orientation.

(3) Using tobacco products in an unauthorized area or facility.

(4) Causing injury or risk of injury to another person or persons.

(5) Causing damage or risk of damage to city property.

(6) Violating any provision of this article.

(b) The director or designee may order the expulsion of any person from any park for a period of seven days to one year if such person:

(1) Has been expelled from the park two or more times in any 30-day period.

(2) Causes injury to another person.

(3) Sells, possesses or uses alcohol or illegal drugs.

(4) Possesses or uses any weapon.

(5) Commits more than one violation of this article in any 12-consecutive-month period.

(c) Any order of expulsion under this section shall be in writing and shall be sent by certified mail to the person expelled at his or her last known address or delivered in person.

(d) The director or designee may forward the written notice of expulsion along with the certified mail receipt to the department of public safety (i.e. police department).

(1) The written notice of expulsion shall be a notice of trespass.

(2) Any person on city park property, in violation of the written notice of expulsion, will be guilty of trespass.

(3) The notice of trespass and expulsion will expire on the date indicated in the written notice of expulsion.

(e) Any person who enters a park during a period during which he or she has been expelled under subsection (a) or (b) of this section is guilty of violating this article and will be subject to the enforcement in FWCC 11-54.

FWCC 11-75 Games and sports

It is unlawful to practice or play baseball, softball, football, hockey, tennis, badminton or other games of like character or to hurl or propel any airborne or other object in such a manner as to interfere with or put at risk other park users.

> (1) It is unlawful to practice or play golf or archery in any city park, unless authorized by the director.

FWCC 11-55(a)(1) regulates the private conduct requiring the high moral standard; 11-55(a)(2) regulates private conduct and discrimination based on race, nationality, religion, disability, and sexual orientation; 11-55(a)(3) and (b)(3) regulates the conduct which U.S. Alcohol, Tobacco, and Controlled Substance Law is already regulating; 11-55 (b)(4) regulates the conduct which State Arms law is regulating; 11-55(a)(4) and (5) and (b)(2) regulate individual invasion of individual rights and FWCC 11-75 requires to get the director's authorization for using the city parks without any facility of a half course of golf course, otherwise, it makes all recreational scope of exercise unlawful for private conduct and individual invasion of individual rights.

As a whole, FWCC 11-55 and 11-75 went too far beyond the boundary of the ordinance to that of the state law, revealing by themselves wrongly enacted city ordinances.

In the *Civil Rights Cases*, 109 U.S. 3 (1883), the Supreme Court declared the Civil Right Act of 1875 unconstitutional, which provided private conduct and individual invasion of individual rights (Reconsideration p. 6) as:

> Justice Bradley, writing for the Court, said the "Fourteenth Amendment... is prohibitory upon the States. **Individual invasion of individual rights** is not the subject matter of the amendment. The Court made it clear that Congress's authority was only over state and

> local governments and their officials, not over private conduct: "It does not authorize Congress to create a code of municipal law for the regulation of private rights..." The Court explained that private action was governed by state law and not by the United States Constitution: "The wrongful act of an individual, unsupported by any such authority is simply a private wrong, or crime of that individual..."

One park user's invasion of other park user's rights in the public parks, such as injury or private wrong of FWCC 11-55 (a)(4) and (5) and (b)(2), is governed by state laws for redress. So, the *Civil Rights Cases* makes clear that FWCC 11-55 and 11-75 are unconstitutional. So, all city employees' orders, which departed too far from even the alleged unconstitutional City codes, are unconstitutional.

Citing the case of *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir. 1994) and the case of *Reno v. Flores*, 507 U.S. 292, 295 (1993), judge Robart discussed the rational basis test for determining the constitutionality of FWCC 11-55 and 11-75.

However, *Kawaoka v. City of Arroyo Grande* was a case of a 1992 ordinance of City of San Jose which prohibits a cardroom from relocating except when eminent domain and in the case of *Reno v. Flores*, respondents are a class of alien juveniles arrested by the Immigration and Naturalization Service(INS) and detained pending deportation hearings pursuant to a regulation, which provides for the release of detained minors only to their parents, close relatives, or legal guardians, except in unusual

and compelling circumstances. The Supreme Court found that these regulations were within the authority granted to the Attorney General, Department of Justice and the INS by federal statute and held as:

- Because this is a facial challenge to the regulation, respondents must establish that **no set of circumstances exist** under which the regulation would be valid.
- Regulation 242.24, on its face, **does not violate the Due Process Clause**.

Both cases of *Kawaoka v. City of Arroyo Grande* and *Reno v. Flores* are completely irrelevant to FWCC 11-55 and 11-75 regulating the private conduct and individual invasion of individual rights and the conduct which state laws are already regulating in the public parks. But judge Robart on the rational basis test ruled as (p. 41):

> Thus, the proper test for determining the constitutionality of the City ordinances at issue is **the rational basis test**. That is, whether the city, in passing FWCC 11-55 and 11-75, was acting in pursuit of **permissible city objectives** and, if so, whether the means adopted were **reasonably related to accomplishment of these objectives.** *See Reno v. Flores*, 507 U.S. 292, 295 (1993). The court is satisfied that the City's objectives, i.e., public safety in its park, is reasonably related to a ban on hitting golf balls in a public park. Accordingly, the court does not find that FWCC 11-75 is unconstitutional.
>
> As for FWCC 11-55 - the ordinance permitting the City to exclude people from city parks - the court likewise finds that

> **this ordinance is reasonably related** to the City's **objectives in keeping its parks safe for the residents of Federal Way who use the park in a safe and respectful manner**. Accordingly, the court finds that Mr. Kim's **expulsion** from the city park for hitting golf balls was **not a violation of any fundamental right and that the City' ordinances did not violate Mr. Kim's due process rights.**

4. Supreme Court Rulings for deprivation of liberty

In *Cummings v. Missouri*, 71 U.S. 277, 18 L.Ed 356 (1866) (Complaint p. 19 and Reconsideration p. 10), U.S. Supreme Court explained that "[t]he deprivation of any rights, civil or political, previously enjoyed, may be punishment."

In *Washington v. Harper*, 109 Nev.966, 860 P.2d 705 (1903) (Complaint p. 11 and Reconsideration p. 10), the Supreme Court separated procedural and substantive issues regarding the authority of prison administrator to give anti-psychotic drugs to an inmate **against his will**. The Supreme Court found that the administrator of anti-psychotic drugs to a defendant under certain circumstances constituted **a deprivation of liberty that was protected by due process.**

In *Hudson v. Palmer*, 468 U.S. at 530, 104 S.Ct. at 3202, 82 L.Ed.2d at 405 (1984) (Complaint p. 19 and Motion for reconsideration p. 10), the Supreme Court has held:

> that **intentional infliction of harm on the person** or property of a prisoner **violates due**

> **process and that procedural due process principles require the state to grant a post-deprivation hearing** to prisoners who allege intentional destruction of their liberty or property. *Hudson v. Palmer*, 468 U.S. 517,104 S.Ct. 3194, 82L.Ed.2d 393 (1984), on remand 744 F.2d 22(4th Cir. 1984).

All previous Supreme Court rulings make clear FWCC 11-55 and 11-75 are unconstitutional. Accordingly, the City's action of expulsion from the public park one year and order not to enter the public park for one year and the City employees' orders to stop exercise deprived Kim of liberty, the fundamental right in the form of liberty protected by Fourteenth Amendment without due process of law.

B. Judge Robart's five one-sided biased orders in this same case.

1. First biased order denied motion for default judgment

On May 2, 2008, Kim filed a complaint with the court. Defendant didn't serve answer within 20 days, violating Fed. Rules 12(a)(1)(A)(i). On June 4, 2008, Kim filed motion for default judgment. 35 days later, on June 6, 2008, defendant filed answer after the motion for default judgment was filed. On July 8, 2008, Judge Robart denied the motion, because defendant filed the notice of appearance and Kim failed to give the City proper notice of the motion for default judgment by violating Fed. Rules 55(b)(2). But Notice of appearance was not a pleading required by Fed. Rules 7(a)(2), and when the motion for default judgment was filed, the notice of the

motion for default judgment was automatically given by CM/ECF filing system. So, the written notice of the application of 55(b)(2), *"that party or its representative must be served with written notice of the application at least 3 days before the hearing"*, means the notice of the hearing of the default judgment. So, the order denied motion for default judgment was the first biased order violating Fed. Rules 55(b)(2).

2. Second biased order denied motion for discovery

Defendant didn't provide initial disclosure (Defendant's initial disclosures p. 2) of the names and address of City council members, City Manager, and City attorney who were involved in this case (Complaint p. 20 - 22). On December 15, 2008, in good faith, Kim requested to answer the interrogatory questions including their names and addresses. Defendant's attorney Brian Christensen objected all answers including their names and addresses, because of "not directed to a party." (Interrogatory questions p. 1-10). After having waited for two months, on February 16, 2009, Kim filed motion for an order to answer the interrogatory questions for discovery pursuant to Fed. Rules 37(a)(1). On March 20, 2009, judge Robart denied the motion for discovery.

> **First**, Fed. Rules 26(a)(1)(A) reads as:
> *In General.* Except as exempted by Fed. Rules 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, **without awaiting a discovery request**, provide to the other parties:

> (i) the name and, if known, the address and telephone number of each individual likely to have discoverable information — along with the subjects of that information— that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

City's undisclosed employees' names or addresses involved in this case violated Fed. Rules 26 (a)(1)(A). There is no provision requiring the discovery conference for interrogatory questions. So, the discovery conference is not prerequisite for interrogatory questions and Fed. Rules 26(a)(1)(A) clearly implies that any party can request discovery conference if needed. However, ignoring the two-month's waiting in good faith, judge Robart didn't mention the defendant's violation of Fed. Rules 26(a)(1)(A) and didn't order to disclose the employees' names and addresses who were involved in this case, but blamed Kim for not having had the discovery conference and overpowered **beyond his authority** as, ***"In the future, however, the court will not permit Mr. Kim to dispense with discovery conference prior to bringing suit"*** as if he had the power to permit "bringing suit" (p. 44).

Second, City of Federal Way is a city government. Actions of any governmental entity give rise to state action for the purpose of constitutional limitations. Any subdivision of a state, be it an **administrative agency** or an independent political subdivision, such as **a city**, represents government or state authority to a sufficient degree to invoke constitutional restrictions on its actions. Thus, the

Constitution's protection of individual liberties and its requirement for equal protection apply to the government at all levels - federal, state, and local – and to the actions of government officers at all levels. Therefore, the Constitution applies to all the City employees' actions involved in this case, because each employee's action is the City's action. Accordingly, no matter whether it was action of a governmental entity, or action of city, or action of a governmental agency, all the City employees involved in this case must furnish the information to the nominal party, "City of Federal Way", pursuant to Fed. Rule 33(b)(1)(B), which reads as:

> Fed. Rules 33(b):
> (1) *Responding Party.* The interrogatories must be answered:
> (A) by the party to whom they are directed; or
> (B) if that party is a public or private corporation, a partnership, an association, or a **governmental agency**, by any officer or agent, who must furnish the information available to the party.

In reply to defendant's response to the motion for an order to answer interrogatory questions (Reply p. 2), Kim clearly pointed out as:

> Because "City of Federal Way" is a vicarious party for the employees' tortious acts, the employees involved in this case, the actual parties must furnish the information available to the vicarious party by Fed. Rules 33(b)(1)(B).

However, denying Fed. Rules 33(b)(1)(B), judge Robart ruled as (p.45):

> The court directs Mr. Kim to Federal Rule of Civil Procedure 33, which explains that interrogatories may **only be directed to parties**. Mr. Kim did **not name any of the City's employees in his lawsuit. The employees are therefore not parties and not required to answer interrogatories in this case.**

Judge Robart's ruling shows that intentional objection of Fed. Rules 33(b)(1)(B) and application of wrong provision of Fed. Rules 33(b)(1)(A).

Third, attorney Brian Christensen objected all answers including employees' names and addresses involved in this case, for the reasons of *"Question not directed to a party to the litigation. Also, question is leading and contains a false legal premise ... Plaintiff's park expulsion was warranted."* However, Fed. Rules 33(b)(3) and (4) read as:

> (3) *Answering Each Interrogatory*. Each interrogatory must, to the extent it is **not objected to**, be answered separately and fully in writing under oath.
> (4) *Objections*. The grounds for objecting to an interrogatory must be stated with **specificity.**

All questions were based on the City employees' sayings (statements) and documents when they ordered. So, they were absolutely true and the questions were to make sure that their actions went too far beyond the provisions of the City ordinances. Therefore, their candid answers could help early settlement.

The expulsion is in question of whether it is constitutional or not, but respondent's counsel Christensen falsified as "warranted" as if it were already declared as constitutional. So, respondent's counsel Christensen falsified that *"question is leading and contains a false legal premise."* Siding with respondent's counsel Christensen, Judge Robart ruled the objection violated Fed. Rules 33 (b)(1)(B) and 33(b)(3) and (4) as, ***"the objections are sustainable"*** and ruled nothing answered as, ***"the City answered fully the interrogatories"*** (p. 45). Judge Robart, unfairly siding with respondent counsel Christensen who violated Fed. Rules 33 (b)(1)(B) and 33(b)(3) and (4), blocked even the chance of early settlement.

Fourth, judge Robart ruled the answer of Assistant City Manager, Cary M. Roe, P.E., as the answer of **its representative** of City of federal Way:

> The City shall file with the court, and serve on Mr. Kim, either (1) an explanation for the absence of a signature **by its representative** or (2) a signed copy of the interrogatory responses pursuant to Fed. Rules 33(b) by Tuesday, March 24th at noon" (p. 44).

However, under the current Council/Manager form of city government of Federal Way, the City Manager's administrative responsibility is equivalent to Mayor's and the City Manager is involved in this case. So, City Manager's name, address, and answer were especially required as a representative of the City, but judge Robart objected City Manager's answer for the reason of **non-party** but **accepted a complete non-party's answer** as the answer of the City's representative. The

assistant City Manager Cary M. Roe, P.E was not involved in this case and he was completely ineligible for a representative for the City. So, judge Robart had a super power making a complete non-party's answer as the answer of the City's representative, violating Fed. Rules 33(b)(1)(A) and 33(b)(1)(B) and 33(b)(3) and (4).

3. Third biased order granted motion for summary judgment

The motion for summary judgment was based on the repudiation of previous Supreme Court rulings cited in the complaint on the basis of irrelevant inferior court cases for the misleading and improper purpose, violating Fed. Rules 11(b)(1) and 11(c)(2) and STARE DECISIS. In the opposition to the motion for summary judgment, Kim pointed out all of those. However, judge Robart granted the motion for summary judgment, repudiating previous Supreme Court rulings second time with intent and ruined his scheduled order of the trial date set on June 9, 2009 and the mediation set no later than the thirty days before the trial date and he completely ignored the application for the designation of a mediator by Kim entered on April 13, 2009 (Dkt. #45) by judge Robart.

4. Fourth biased order denying motion for sanctions

Motion for summary judgment was composed of the repudiation of previous Supreme Court rulings cited in the complaint on the basis of irrelevant inferior court cases, violating the doctrine of STARE DECISIS, and the terrible lack of knowledge unable

to distinguish the boundary of the ordinance from that of state law. So, the motion for summary judgment had nothing but an improper purpose of misleading, delaying, harassing, and increasing cost of litigation, violating Fed. Rules 11(b)(1), and he didn't withdraw it within 21 days, violating Fed. Rules 11(c)(2).

In the reply to Kim's opposition to the motion for summary judgment, respondent's counsel Brian Christensen defied the opposition based on the previous Supreme Court rulings as "lacks any legal support" and "raises no issues of fact" on the basis of irrelevant inferior courts cases. So, respondent's counsel Christensen repudiated previous Supreme Court rulings second time. Such conduct violated good moral and professional character, but judge Robart denied the motion for sanctions. The ruling is really something spectacular to see as below (p. 42):

> Mr. Kim claims that the City's motion was brought for the "improper purpose to harass, cause unnecessary delay and needlessly increase the cost of litigation." (Mot. (Dkt. #41) at 1.) The court finds the opposite to be true and therefore denies Mr. Kim's motion for sanctions. The City has defended this **frivolous lawsuit** in a **respectful** and **professional manner**. The City's motion for summary judgment was thoughtful, accurate, and the proper method for requesting that this matter be dismissed.

5. Fifth biased order denied motion for reconsideration

In the motion for reconsideration, Kim cited the previous Supreme Court rulings **third time**

(Complaint p. 6-17; Opposition p. 3; Reconsideration p. 2-10) and added newly the famous *Civil Rights Cases*. However, judge Robart denied the motion for reconsideration as below (p. 37):

> Pursuant to Local Rules W.D. Wash. CR 7(h)(1), motions for reconsideration are disfavored, and will ordinarily be denied unless there is a showing of (a) manifest error in the prior ruling, or (b) facts or legal authority which could not have been brought to the attention of the court earlier, through reasonable diligence. Because Mr. Kim has not made either showing with regard to the court's ruling on Defendant's motion for summary judgment, Mr. Kim's motion (Dkt. #49) is DENIED.

However, CR 7(h)(1) reads as:

> CR 7 **(h) Motions for Reconsideration**
> (1) *Standard.* Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or **a showing of new facts or legal authority which could not have been brought to its attention earlier** with reasonable diligence.

Judge Robart's repudiation of previous Supreme Court rulings second time was more than a manifest error. The newly cited the *Civil Rights Cases* was **clearly a showing of new facts or legal authority which could not have been brought to its attention earlier.** Because the *Civil Rights Cases was* a famous case in which the Civil Right Act of 1875 was declared unconstitutional, Kim thought that the United States court judge Robart already

knew the case and that it was not necessary to cite it. But, when the motion for summary judgment was granted, Kim thought judge Robart forgot the case and thus, cited it in the motion for reconsideration to give a final chance to correct it. However, judge Robart repudiated again even the newly cited Supreme Court ruling of the *Civil Rights Cases* with intent. Therefore, judge Robart's denial of motion for reconsideration shows judge Robart's tremendous biased power.

C. Respondent's counsel Christensen's violation of good moral and professional character

Respondent's counsel Christensen didn't serve the answer within 20 days, violating Fed. Rules 12(a)(1)(A)(i) and didn't disclose the names and addresses of the City employees who were involved in this case, violating Fed. Rules 26(a)(1)(A).

When on December 15, 2008, in good faith, Kim requested to answer interrogatory questions including the city employees' names and addresses involved in this case, attorney Christensen objected all answers including names and addresses for the reason of non-party, but provided a complete non-party's answer as the answer of the City's representative, violating Fed. Rules 33(b)(1)(A) and(B) and 33(b)(3) and 33(b)(4).

The interrogatory questions were absolutely true and their candid answers could help early settlement, by adjusting the claimed amounts.

Motion for summary judgment based on the repudiation of previous Supreme Court rulings cited in the complaint on the basis of irrelevant inferior court cases and the terrible lack of knowledge unable

to distinguish the boundary of the ordinance from that of state law had nothing but an improper purpose of misleading, delaying, harassing, and increasing cost of litigation, violating Fed. Rules 11(b)(1), and he didn't withdraw it within 21 days, violating Fed. Rules 11(c)(2).

Respondent's counsel Christensen has been admitted to practice in the highest court of Washington State and qualified for admission to the Bar of U.S. Supreme Court. So, he knew that he should follow Fed. Rules and that he could not repudiate the previous Supreme Court rulings without showing of a good cause.

In this case, Respondent's counsel Christensen violated STARE DECISIS twice and eight provisions of Fed. Rules. Such conduct violated good moral and professional character as an attorney and increased the cost and time and agony for this litigation. Judge Robart's unfairly biased order was one thing and attorney Christensen's misconduct was another. So, this Court must sanction attorney Christensen for a five-year disciplinary punishment for the infamously committed misconduct.

VII. LIABILITY

1. Total claim of $9,526,000.00 against the City for each employee's liability (Excerpts p. 19-23)

There was no injured person for whom Kim was liable and Kim didn't violate any provision of the City ordinances. But, the park employee Young Yi ordered to stop the exercise saying, "public safety." So, he is liable for the limited liberty and the infliction of mental distress ($15,000.00) from the

order far exceeded his official authority from June 1 to August 27, 2007.

Supervisor Tim Dickinson's reason for the order stopped the exercise was completely unrelated to FWCC 11-55 and 11-75. So, he is liable for the limited liberty and infliction of mental distress ($21,000.00) from the order far exceeded his official authority from July 16 to August 27, 2007.

Director of parks Donna Hanson punished Kim for one year for speculative assumption of violated the City ordinances two times. So, she is liable for $54,750.00 for the lost benefits beyond the price from the stopped daily exercise including lost enjoyment of public park for one year plus the damage actually paid for the just 30-minute exercise in the golf course for one year; $237,250.00 for deprived right for one year and the infliction of mental distress from extreme outrageous unusual punishment and for the damages of Kim's reputation and good standing from the expulsion order by arbitrarily applied trespass to the public park; $2,628,000.00 for punitive damage; total $2,920,000.00.

Police officer C.L. Tucker ordered not to enter the public park and made a committed criminal list and warned that entering the park may result in a fine, imprisonment, or both by RCW 9A.52.080.

RCW 9A.52.080: Criminal trespass in the second degree.

(1) A person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.

(2) Criminal trespass in the second degree is a misdemeanor.

RCW 9A.52.080 clearly indicates "premises of another" but not public park(s). So, he is liable for $73,000.00 for the limited liberty and infliction of mental distress from the intentionally fabricated "criminal trespass" to the public park for one year; $54,750.00 for the inflicted apprehension from the prosecution for one year; $54,750.00 for the inflicted humiliation of criminal list and the damage of Kim's reputation and good standing for one year; $1,642,500.00 for punitive damage; Total $1,825,000.00.

The letter (Exhibit 2 of complaint) on June 25, 2007 pointed out the unconstitutional city ordinances to be revised. City Council intentionally ignored and challenged to the letter and leaves the City Codes unconstitutional. Thus, City Council provided the ground for the City employees' orders; expulsion for one year, order not to enter the public park for one year, the orders to stop exercise. City Council still maintains FWCC 11-55 which continuously authorizes the expulsion limiting fundamental rights. As long as FWCC 11-55 has enforceable power, Kim cannot continuously exercise in any city public park. So, the expulsion for one year actually extends until the decision by this Court is made. But without increasing any amount, Kim claims $365,000.00 against the City Council for the deprived liberty for one year and the infliction of mental distress for one year; $3,285,000.00 for punitive damage; Total $3,650,000.00.

Under the current Council/Manager form of City Government of Federal Way, the City Manager's administrative responsibility is equivalent to

Mayor's. He should have answered to the letter but did not and challenged to the letter. His omission of answer to the letter added infliction of mental distress. So, he is liable for $73,000.00 for infliction of mental distress through a tacit consent for the extreme outrageous and intolerable punishment; $657,000.00 for punitive damage, total $730,000.00.

Kim claims $36,500.00 against the city attorney who called whether the claim was filed for the inflicted mental distress from the acts recklessly challenged to the letter and roused the director's extreme outrageous and intolerable punishment, by giving wrong information about the constitutionality of the City Codes and $328,500.00 for punitive damage; total $365,000.00.

2. Computation of damages

(a) The amount for the infliction of mental distress was based on the case of *Blakely v. Shortal's Estate*, 20 N.W.2d 28 (Iowa 1945). In that case, D was working for *Shortal's Estate*. D's wife had left him, and D was a guest in the home of a friend of his, *Blakely*. While *Blakely* was away from the house, D decided to commit suicide by slitting his throat in *Blakely*'s kitchen. *Blakely* returned to find D's corpse lying there, in a pool of blood and suffered from nervous shock, and became ill. *Blakely* sued D's estate for intentional infliction of mental distress. The jury could find that the defendant "willfully" caused the plaintiff's emotional distress, since the defendant acted in disregard of the high probability that the plaintiff would suffer the distress. The case of *Blakely v. Shortal's Estate* awarded the damages for infliction of mental distress, the one-time nervous shock at the scene of murder.

(b) Kim added punitive damages for one year, 365 times nervous shock, each day for one year on daily basis for the inflicted mental distress for 365 days and nine times of it for punitive damages. In trial, jury could award more than nine times of it, because, in *Pacific Mutual Life Insurance Co. v. Haslip,* 499 U.S. 1(1991), the Supreme Court upheld a punitive damage award 200 times the size of the actual loss; in *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443 (1993), the Court upheld a very large punitive damage award, one that was 500 times the size of the compensatory damages; and in *BMW of North America, Inc. v. Gore,* 517 U.S. 559 (1996), Alabama Supreme Court awarded $2 million in punitive damages for $4,000 in compensatory damages.

VIII. NO ORAL ARGUMENT

Oral argument would repeat the disgraced and dishonored fame and dignity of the United States court by a United States district court judge's biased tremendous power. Such shameful oral argument would be only to waste precious time and money.

IX. CONCLUSION (RELIEF SOUGHT)

For all reasons stated above, petitioner respectfully request that this Court grant review of this case.

Respectfully submitted on August 11, 2009.

s/ Cyrus Y. Kim Pro Se

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CYRUS Y. KIM, Appellant/Plaintiff, v. CITY OF FEDERAL WAY, Appellee/Defendant.	CASE NO. 09 - 35504

This case is pending in a United States Court of Appeals and judgment is not rendered.

This case has imperative public importance requiring immediate determination by this Court before appeals court judgment is rendered, because City of Federal Way's park ordinances are continuously limiting 80,000 resident's liberty without due process of law.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYRUS Y. KIM, Plaintiff, v. CITY OF FEDERAL WAY Defendant.	CASE NO. C08-688JLR ORDER DENYING MOTION FOR RECONSIDERATION

Before the court is Plaintiff Cyrus Kim's motion for reconsideration (Dkt. #49) of the court's May 6, 2009 order granting summary judgment for Defendant City of federal Way (Dkt. #47). Pursuant to Local Rules W.D. Wash. CR 7(h)(1), motions for reconsideration are disfavored, and will ordinarily be denied unless there is a showing of (a)manifest error in the prior ruling, or (b) facts or legal authority which could not have been brought to the attention of the court earlier, through reasonable diligence. Because Mr. Kim has not made either showing with regard to the court's ruling on Defendant's motion for summary judgment, Mr. Kim's motion (Dkt. #49) is DENIED.

Dated this 15th day of May, 2009.

s/JAMES L. ROBART
United states District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYRUS Y. KIM, Plaintiff, v. CITY OF FEDERAL WAY, Defendant.	CASE NO. C08-688JLR ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND DENYING MOTION FOR SANCTIONS

I. INTRODUCTION

Before the court are two motions: Defendant's motion for summary judgment (Dkt. #29) and Plaintiff Cyrus Kim's motion for sanctions (Dkt. #41). The court has reviewed the pleadings submitted in support of and in opposition to the motion and for the following reasons the court GRANTS defendant's motion for summary judgment (Dkt. #29) and DENIES Plaintiff's motion for sanctions (Dkt. #41).

II. BACKGROUND & ANALYSIS

This matter arises out of Plaintiff Cyrus Kim's decision to hit golf balls in a public park in order to reduce belly fat. (Compl. (Dkt. #1) at 2.) On June 1, 2007, Mr. Kim was hitting golf balls in a park in Federal Way, Washington. (*Id.* at 3) Mr. Kim was asked by park employees to cease hitting golf balls as this activity was in contravention of Federal Way City Code ("FWCC") 11-75. (*Id.*) Mr. Kim told the employee to "[m]ind your own business." (*Id.*) Mr. Kim then went home. On June 15, 2007, Mr. Kim noticed that the park employees had posted a sign stating that "golf and archery are strictly prohibited at all times." (*Id.*) Mr. Kim wrote various letters to the Federal Way City Council ("City Council") arguing that the City ordinance prohibiting golfing in public parks was in violation of the "Ninth Amendment because the ordinance limits the fundamental right and liberty of daily exercise." (*Id.*) Mr. Kim did not receive a response to his letters.

On July 16, 2007, after finishing a jog in the park, Mr. Kim started his "body twist" exercises by hitting golf balls toward a soccer field in the park. (*Id.* at 4) A park supervisor stopped Mr. Kim and explained that hitting golf balls in the soccer field was not allowed. (*Id.*) Mr. Kim ceased hitting golf

balls. On August 29, 2007, Mr. Kim was served at his home with an order of expulsion and notice of trespass by the director of parks and was warned not to enter the park or risk being arrested and prosecuted for trespass. (Id. at 5) Mr. Kim alleges that order of expulsion and notice of trespass caused him many sleepless nights as well as abdominal pain and diarrhea. (*Id.*)

Mr. Kim brought this action against the City of Federal Way ("the City") alleging that FWCC 11-55 and 11-75 are unconstitutional. Mr. Kim seeks judgment against the City in the amount of $9,526,000 as well as damages for vicarious liability from the City Council, the director of parks, the police department, the City Manager, the City Attorney and the park employees in an amount upwards of $9,000,000. (Id. at 23.) The City moves for summary judgment on the basis that it did not infringe upon Mr. Kim's fundamental property or liberty interest and that FWCC 11-55 (which gives the City authority to expel a person from the city parks), and 11-75 (which prohibits the playing of golf in a city park), arise from the City's permissible authority to determine that certain activities are unsafe for its public parks and that the ordinances at issue are reasonably based upon legitimate concerns. (Mot. Dkt. #29) at 3.) The court agrees with the City.

Summary judgment is appropriate if the evidence, when viewed in the light most favorable to the non-moving party, demonstrates there is no genuine issue of material fact. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477, U.S. 317, 322 (1986); *Galen v. County of Los Angeles*, 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing there is no material factual dispute and he or she is entitled to prevail as a

matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets its burden, the nonmoving party must go beyond the pleadings and identify facts which show a genuine issue for trial. *Cline v. Indus. Maint. Eng'g. & Contracting Co.*, 200 F.3d 1223, 1229 (9th Cir. 2000).

In order for Mr. Kim to establish a violation of his substantive due process right, he is required to prove that the enactment of FWCC 11-55 and 11-75 was "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir. 1994) (quoting *Sinaloa Lake Owners Ass'n v. City of Simi valley*, 882 F.2d 1398, 1407 (9th Cir. 1989)). "Legislative acts that do not impinge on fundamental rights or employ suspect classifications are presumed valid, and this presumption is overcome only by a 'clear showing of arbitrariness and irrationality.'" *Kawaoka*, 17 F.3d at 1234 (quoting *Hodel v. Indiana*, 452 U.S. 314, 331-32 (1981)). In analyzing a substantive due process challenge, the court does "not require that the City's legislative acts actually advance its stated purposes, but instead look[s] to whether 'the government body could have had no legitimate reason for its decision.'" *Kawaoka, 17 F.3d at 1234 (*emphasis in original*) (*quoting *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 690 (9th Cir. 1993)).

The court first finds that there is no fundamental right implicated in the application of these ordinances to this situation. Mr. Kim does not have a fundamental right to do belly exercise in a public park utilizing a golf club and baseballs or golf balls. Nor does the court find that the mere right to be present in a public park is a fundamental right.

Mr. Kim, a *pro se* plaintiff, moves the court to order Defendant City of Federal Way ("the City") to require its employees to answer interrogatory questions and to sign an oath attesting to their answers. Mr. Kim also objects to the City's attorney, Brian Christensen, answering the interrogatories on the City's behalf. The City responds to the motion with a declaration from its attorney stating that Mr. Kim failed to conduct a discovery conference prior to bringing this motion pursuant to Federal Rule of Civil Procedure 37(a)(1).

Although the court may deny Mr. Kim's motion on the sole basis that he failed to confer in good faith with the City prior to bringing this motion, given that Mr. Kim is proceeding *pro se* the court will consider the merits of motion. *See* Fed. R. Civ. P. 37(a)(1) (stating that a party moving for an order compelling discovery "must include a certification that the movant has in good faith conferred or attempt to confer with the person or party failing to make disclosure or discovery.") In the future, however, the court will not permit Mr. Kim to dispense with the discovery conference prior to bringing suit.

The court has reviewed Mr. Kim's motion and supporting documentation, including a copy of the City's discovery responses attached to Mr. Kim's reply brief, as well as the City's response to. With respect to Mr. Kim's motion to compel the City's employees to answer the interrogatories, the court directs Mr. Kim to Federal Rule of Civil Procedure 33, which explains that interrogatories may only be directed to parties. Mr. Kim did not name any of the city's employees in his lawsuit. The employees are therefore not parties and not required to answer interrogatories in this case. The court has reviewed

the City's answers to Mr. Kim's interrogatories and finds that the objections are sustainable and that the City answered fully the interrogatories.

The court does note, however, that Mr. Kim's copy of interrogatory responses supplied by the City does not include the signature of the party providing the answers. Rule 33(b) requires that both the attorney making the objections and the party providing the information for the answers sign the interrogatory responses. Here, Mr. Christensen is the only individual to sign the answers. (*See* Dkt. #28-2.) The City shall file with the court, and serve on Mr. Kim, either (1) an explanation for the absence of a signature by its representative or (2) a signed copy of the interrogatory responses pursuant to Rule 33(b) by **Tuesday, March 24th at noon**.

Dated this 20th day of March, 2009.

s/JAMES L. ROBART
United States District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CYRUS Y. KIM, Plaintiff, v. CITY OF FEDERAL WAY, Defendant.	CASE NO. C08-688JLR ORDER DENYING MOTION FOR DEFAULT JUDGMENT

Before the court is Plaintiff Cyrus Kim's motion for default judgment (Dkt. #6). Mr. Kim moves for

default judgment pursuant to Federal Rule of Civil Procedure 55(b)(2). The court DENIES the motion.

Defendant City of Federal Way ("the City") filed a notice of appearance on May 8, 2008 (Dkt. #4) and an answer on June 6, 2008 (Dkt. #7). Although the City's answer filed shortly after its time for responding to the complaint had lapsed, the court finds no prejudice to Mr. Kim from the City's untimely answer. Mr. Kim also failed to give the City proper notice of his motion for default judgment. *See* Fed. R. Civ. P. 55(b)(2) ("If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of application at least 3 days before the hearing.") For these reasons, the court DENIES Mr. Kim's motion for default judgment (Dkt. #6).

Dated this 8th day of July, 2008.

s/JAMES L. ROBART
United States District Judge

(2)

No. 09-200

Supreme Court, U.S.
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In The

Supreme Court of the United States

CYRUS Y. KIM,

Petitioner,

vs.

CITY OF FEDERAL WAY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT CITY OF FEDERAL WAY'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioner raises six questions for review, however, the pertinent question presented is whether Petitioner makes a sufficient showing that this petition is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination by this Court, wherein he claims that the City of Federal Way, Washington's park ordinances violated his fundamental right to hit golf balls in a public park?

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STATEMENT OF THE CASE

An appeal of the District Court's decision dismissing Petitioner's case is still pending in the 9th Circuit Court of Appeals. Therefore, pursuant to *Supreme Court Rule 11*, Petitioner must provide a sufficient showing that "the case is of such imperative public importance as to justify deviation from normal practice and to require immediate determination" by this Court. Petitioner's stated reasons as to why this case is of such "imperative public importance" is "because City of Federal Way's park ordinances are continuously limiting 80,000 residents' liberty without due process of law." (Pet. For Writ p. 1, 37) Such a claim is remarkable in its lack of substance.

Petitioner brought suit in Federal Court in the Western District of Washington challenging the constitutionality of the city ordinances that prohibited golf, among other things, and provided for expulsion from the park in the event of two or more violations of park rules in a one year period. Petitioner was warned and asked to stop hitting golf balls on one occasion, admits he saw the sign prohibiting golf, but proceeded to hit golf balls again, on another day. As a result he received a notice that if he was seen in the park again, within a one year period, he could be cited for trespassing. Plaintiff claimed his due process rights were violated and he had a fundamental right to hit golf balls for exercise in the park. There are no allegations that any other citizens have a problem with the city park ordinance prohibiting golf.

The District Court granted the Respondent's Motion for Summary Judgment and dismissed the case, referring to the claims as "frivolous." (Order Granting Motion for Summary Judgment, Pet. For Writ, appendix, p. 42)

REASONS FOR DENYING THE WRIT

1. This matter does not approach the standard for finding "such imperative public importance" that "immediate determination" from the Court is "required."

Petitioner's explanation as to why such import attaches to this case is not based upon facts, law or anything rational. Petitioner makes no attempt to cite any authority or analysis as to why review should be accepted.

2. The District Court's decision was correct because the City of Federal Way's park regulations are constitutionally sound.

A party challenging a statute on the basis that the statute violates the Due Process Clause of the Fourteenth Amendment bears the burden of demonstrating the scheme's unconstitutionality. ***Lujan v. G & G Fire Sprinklers, Inc.*, 532 U.S. 189, 198, 121 S.Ct. 1446, 149 L.Ed.2d 391 (2001).** Both substantive and procedural due process require a protected liberty or property interest to be deprived by state action. The first inquiry in every due-process

challenge is whether the complaining party has been deprived of a protected interest in "property" or "liberty." *See* ***Am. Mfrs. Mut. Ins. Co. v. Sullivan,*** **526 U.S. 40, 59, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999);** ***Mathews v. Eldridge,*** **424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).**

a. Petitioner's contention that a fundamental right has been infringed upon is baseless.

If a fundamental right is involved, the State must show a compelling interest. Substantive due process forbids the government to infringe certain "fundamental" liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. *See, e.g.,* ***Collins v. Harker Heights,*** **503 U.S. 115, 125, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992);** ***Bowers v. Hardwick,*** **478 U.S. 186, 191, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986).** However, merely having a liberty or property interest guaranteed by the constitution is not equivalent to having a fundamental right. The court in ***Doe v. City of Lafayette,*** **377 F.3d 757, 772 (7th Cir.2004)**, examined an issue similar to that at bar:

> Our first duty is to provide a "careful description" of the liberty interest that Mr. Doe seeks to have protected. ***Washington v. Glucksberg,*** **521 U.S. 702, 721, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997).** Then, we must ask whether that interest is "fundamental,"

> that is, whether it is "objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [it] were sacrificed." ***Id.* at 720-21, 117 S.Ct. 2258** (internal quotation marks and citations omitted). In undertaking these inquiries, we must remain mindful of the Supreme Court's admonition that we ha[ve] always been reluctant to expand the concept of substantive due process because guide-posts for responsible decision making in this unchartered area are scarce and open-ended. By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore exercise the utmost care whenever we are asked to break new ground in this field, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court. ***Id.* at 720, 117 S.Ct. 2258** (internal quotation marks and citations omitted); *see also* ***Nat'l Paint & Coatings Ass'n v. City of Chicago*, 45 F.3d 1124, 1129 (7th Cir.1995)**.

Doe v. City of Lafayette*, 377 F.3d 757, at 768**. In ***Lafayette, the plaintiff was a convicted sex offender that was banned from entering public parks. He sued, claiming the ban violates his constitutional rights. The Court analyzed caselaw and concluded that there was no authority for the proposition that the right to enter and loiter in a park is a "fundamental right." In

the case at bar, the Petitioner states that he has a fundamental right to exercise and hit golf balls in a park. Petitioner cites the case of ***Evans v. Newton*, 382 U.S. 296 (1966)**, for the proposition that a fundamental right to enter a park exists. However, the ***Evans*** case is an Equal Protection case, wherein the Defendant had sought to exclude citizens based upon their race. The case at bar is not an Equal Protection or First Amendment expression case.

There is no authority for the proposition that a citizen has a fundamental right to exercise or golf in a public park.

Because a ban on playing golf in a park, or even entering a park, does not infringe upon a fundamental right, the question in the case at bar involves the "rational basis standard." *See* ***Doe v. City of Lafayette*,** supra; ***Reno v. Flores*, 507 U.S. 292, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993); *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 291 (5th Cir.2001); *Simi Inv. Co. v. Harris County*, 236 F.3d 240 (5th Cir.2000)**.

b. Petitioner's claim that the City of Federal Way has no authority or basis for the park ordinance is in error.

The test of whether a regulation which does not affect a fundamental right violates substantive due process is whether the government was acting in pursuit of permissible state objectives and, if so, whether the means adopted were reasonably related

to accomplishment of these objectives. ***Reno v. Flores*, 507 U.S. 292, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993); *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 291 (5th Cir.2001); *Simi Inv. Co. v. Harris County*, 236 F.3d 240 (5th Cir.2000)**.

The ***Washington State Constitution, article 11, section 11***, provides "*Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.*" Furthermore, **RCW 35.22.280**, provides authority for the City of Federal Way to establish and regulate parks. The City code sections in dispute, **FWCC 11-55** (Pet. For Writ p. 16) and **FWCC 11-75** (Pet. For Writ p. 17-18) are proper enactments of the City's authority. **FWCC 11-55** is the ordinance that sets out the reasons a person can be expelled from the park. Appellant was "trespassed" from the park for violating sub paragraph (b)(5), *committing more than one violation of this article within any 12-consecutive month period.* It is unclear from Petitioner's complaint how that section of the ordinance violates due process. Petitioner admits to getting caught violating the park ordinance twice in a 12-consecutive month period. **FWCC 11-75** makes it unlawful to play golf in the park. Petitioner was caught doing so and advised of the violation. He decided to disobey the rule. His complaint makes it clear that he did so to get exercise. Certainly there are other ways to exercise, and other places to golf. **FWCC 11-75** states that the purpose of the regulation is to avoid interfering with or putting at risk

other park users. Clearly, enjoyment and safety of park users is a legitimate City concern.

CONCLUSION

Petitioner's writ must be denied.

RESPECTFULLY SUBMITTED September 16, 2009.

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